

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

**August 29, 2006**

Cornelia G. Clark  
Clerk of Court of Appeals

**NOTICE**

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

**Appeal No. 2005AP1726**

**Cir. Ct. No. 2001CF1411**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT I**

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**STATE OF WISCONSIN,**

**PLAINTIFF-RESPONDENT,**

**V.**

**TRACY L. SINGLETON,**

**DEFENDANT-APPELLANT.**

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APPEAL from an order of the circuit court for Milwaukee County:  
MEL FLANAGAN, Judge. *Affirmed.*

Before Wedemeyer, P.J., Fine and Kessler, JJ.

¶1 PER CURIAM. Tracy L. Singleton appeals *pro se* from an order denying his motion for postconviction relief pursuant to WIS. STAT. § 974.06

(2003-04).<sup>1</sup> Singleton claims the trial court erred in summarily denying his motion without conducting an evidentiary hearing. Singleton argues that there was an insufficient basis upon which to accept his guilty plea and trial counsel provided ineffective assistance for failing to raise this issue. Because the trial court did not err in summarily denying the motion, we affirm.

### **BACKGROUND**

¶2 On November 2, 2001, Singleton pled guilty to conspiracy to distribute more than 100 grams of cocaine, contrary to WIS. STAT. § 961.41(1x) (2001-02). He was subsequently sentenced to twenty-five years of imprisonment, including fifteen years of initial confinement and ten years of extended supervision.

¶3 Singleton's conviction stemmed from the sale, and attempted sale, of cocaine in March of 2001. On March 1, 2001, accompanied by Vincent Fayne and another unidentified individual, Singleton sold 142.8 grams of cocaine to a confidential informant. Again, on March 8, 2001, Singleton and Fayne, accompanied by Singleton's girlfriend and her two children, met with the confidential informant for the purpose of selling nine ounces of crack cocaine. Singleton and Fayne arrived at the residence where the sale was to occur in advance of the confidential informant. Upon arrival of the confidential informant, Fayne exited the residence. Singleton then went to a bedroom to retrieve ten ounces of cocaine when he was interrupted by a telephone call from Fayne. Fayne

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<sup>1</sup> All references to the Wisconsin Statutes are to the 2003-04 version unless otherwise noted.

informed Singleton that the police were in the area, and instructed him to “get out of there.” Singleton then aborted the sale.

¶4 Singleton was charged with two counts of delivery of a controlled substance pursuant to WIS. STAT. § 961.41(1)(cm)5 (2001-02).<sup>2</sup> As part of a negotiated plea agreement, these two counts were combined into one count of conspiracy to deliver more than 100 grams of cocaine, contrary to WIS. STAT. § 961.41(1x) (2001-02). Under the agreement, the State agreed not to charge Singleton’s girlfriend for her involvement in the crime. The trial court engaged in a plea colloquy with Singleton, during which Singleton affirmed that: (1) he had read and understood the criminal complaint; (2) the facts set forth therein were correct; and (3) these facts supported the charge of conspiracy. Singleton’s trial counsel also informed the court that he had explained the elements of conspiracy to Singleton, and that Singleton was satisfied that there was a factual basis for the charge.

¶5 Singleton filed a direct appeal seeking plea withdrawal on the basis that his trial counsel provided ineffective assistance for assuring him that he would receive a shorter sentence in exchange for his guilty plea. This court affirmed the conviction.

¶6 On June 3, 2005, Singleton filed a *pro se* motion pursuant to WIS. STAT. § 974.06 requesting withdrawal of his guilty plea. Singleton asserted that there were insufficient facts to support the charge, and his subsequent conviction for *conspiracy* to deliver cocaine. He further contended that trial counsel was

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<sup>2</sup> Fayne was charged under count two of the complaint as party to a crime. Fayne pled guilty to attempted delivery of cocaine.

ineffective for allowing him to plead guilty to conspiracy in the absence of facts to support the charge. Singleton contended that appellate counsel was ineffective for failure to challenge the alleged ineffective assistance of trial counsel.

¶7 The court determined that trial counsel was not ineffective for allowing Singleton to plead guilty to a conspiracy charge because Singleton had acknowledged, during the plea colloquy, that a factual basis existed to support the charge. Consequently, the court determined that appellate counsel was not ineffective for failing to raise this claim on direct appeal. Based on the foregoing, the trial court denied Singleton's postconviction motion on June 6, 2005. This appeal followed.

## DISCUSSION

¶8 Singleton argues that the trial court should not have denied his postconviction motion without conducting a hearing. We reject that argument.

¶9 In order to receive an evidentiary hearing on a postconviction motion, a defendant must meet the following criteria.

Whether a defendant's postconviction motion alleges sufficient facts to entitle the defendant to a hearing for the relief requested is a mixed standard of review. First, we determine whether the motion on its face alleges sufficient material facts that, if true, would entitle the defendant to relief. This is a question of law that we review de novo. [*State v.*] *Bentley*, 201 Wis. 2d [303,] 309-10[, 548 N.W.2d 50 (1996)]. If the motion raises such facts, the [trial] court must hold an evidentiary hearing. *Id.* at 310; *Nelson v. State*, 54 Wis. 2d 489, 497, 195 N.W.2d 629 (1972). However, if the motion does not raise facts sufficient to entitle the [defendant] to relief, or presents only conclusory allegations, or if the record conclusively demonstrates that the defendant is not entitled to relief, the [trial] court has the discretion to grant or deny a hearing. *Bentley*, 201 Wis. 2d at 310-11; *Nelson*, 54 Wis. 2d at 497-98. We require the [trial] court "to form its independent

judgment after a review of the record and pleadings and to support its decision by written opinion.” *Nelson*, 54 Wis. 2d at 498. *See Bentley*, 201 Wis. 2d at 318-19.

*State v. Allen*, 2004 WI 106, ¶9, 274 Wis. 2d 568, 682 N.W.2d 433. The trial court summarily denied Singleton’s motion on the basis that the plea colloquy conclusively demonstrated a sufficient basis to support the conspiracy charge. Thus, Singleton was not entitled to relief. We agree with the trial court’s assessment. During the plea colloquy, the trial court specifically questioned Singleton concerning the factual basis for conspiracy, as follows:

THE COURT: Did you read the criminal complaint in this case or was it read to you?

THE DEFENDANT: I read the criminal complaint.

THE COURT: Do you understand the facts stated in the criminal complaint that would support this charge?

THE DEFENDANT: Yes.

THE COURT: Are the facts stated in the complaint with regard to this charge substantially true and correct?

THE DEFENDANT: Yes

THE COURT: Can you tell me briefly in your own words what it is you did that is the criminal conduct?

[THE DEFENDANT:] Sold five ounces of cocaine to an informant, I guess, if that’s what you want to call him.

THE COURT: Do you understand you’re being charged with doing more than selling five grams of cocaine to an informant?

THE DEFENDANT: Five ounces.

THE COURT: And you did that between March 1 and March 8, 2001?

THE DEFENDANT: Yes.

THE COURT: You were a part of a conspiracy to sell that controlled substance?

THE DEFENDANT: Yes.

THE COURT: Are you pleading guilty to the charge of conspiracy to deliver a controlled substance, cocaine, as listed in the amended information because you're guilty of that offense?

THE DEFENDANT: Yes, I am.

Trial counsel then advised the court that he had explained the elements of conspiracy to Singleton, and he was satisfied that there was a factual basis to support the conspiracy charge:

THE COURT: Are you satisfied that a factual basis exists for the plea?

[DEFENSE COUNSEL:] Your Honor, yes. I do want to indicate for the record that because there was a change, as you have it in front of you, that Mr. Singleton and I did discuss the issue of the conspiracy. In other words, he understands that an agreement between two or more people to commit a crime, in this case delivery of cocaine, constitutes the act of conspiracy.

¶10 This recitation demonstrates that Singleton's claim in this appeal is without merit. Here, Singleton claims that a conspiracy did not exist because the crime occurred between two people—Singleton and the confidential informant. The record, however, easily refutes Singleton's belated contention. The criminal complaint discusses Singleton's interaction with his co-defendant and how the two worked together in selling the drugs. Further, at the sentencing hearing, Singleton admitted that he was the "middleman," getting the drugs from a third person to deliver to the informant. Thus, we conclude that the trial court did not err in summarily denying Singleton's motion without conducting an evidentiary hearing because the record conclusively demonstrates that there was a factual basis for the plea. Accordingly, Singleton's related claims based upon this argument are meritless: trial counsel cannot be ineffective for failing to challenge Singleton's

plea on this basis and postconviction counsel cannot be ineffective for failing to raise this claim during Singleton's direct appeal.

*By the Court.*—Order affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5.

